

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 25-8, SUBCHAPTER B, ARTICLE 1, OF THE CITY CODE RELATING TO TREE PROTECTION.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Section 25-8-602 (*Definitions*) of the City Code is amended to read as follows:

**§ 25-8-602 DEFINITIONS.**

In this article:

(1) HERITAGE TREE means a tree that has at least one stem with a diameter of 24 inches or more, measured four and one-half feet above natural grade, and is a species prescribed by rule as eligible for heritage tree designation.

~~(2)~~~~(4)~~ OWNER includes a lessee.

~~(3)~~~~(2)~~ PROTECTED TREE means a tree with a diameter [circumference] of 19 [60] inches or more, measured four and one-half feet above natural grade.

~~(4)~~~~(3)~~ REMOVAL means an act that causes or may be reasonably expected to cause a tree to die, including:

- (a) uprooting;
- (b) severing the main trunk;
- (c) damaging the root system; and
- (d) excessive pruning.

**PART 2.** Section 25-8-603 (*Administration*) of the City Code is amended to read:

**§ 25-8-603 ADMINISTRATION.**

(A) A city arborist, appointed by the director, shall implement this article.

(B) The Watershed Protection and Development Review Department shall adopt administrative rules for the implementation of this subchapter [~~to~~].

(C) The rules shall:

- (1) describe methods to protect trees against damage during development;
- (2) identify actions that will constitute removal; [~~and~~]
- (3) identify the root areas that require protection against soil compaction or the effects of impervious paving; and
- (4) identify the species of trees eligible for heritage tree designation.

**PART 3.** Section 25-8-604 (*Development Application Requirements*) of the City Code is amended by amending Subsection (C) and adding a new Subsection (D) to read:

- (C) For an application for preliminary plan, final plat, or site plan approval that proposes the removal of a protected tree, the city arborist must review the application and make a recommendation before the application may be administratively approved or presented to the Land Use Commission or city council.
- (D) For an application for preliminary plan, final plat, or site plan approval that proposes the removal of a heritage tree, the applicant must file a request for a variance under Division 3 of this subchapter before the application may be administratively approved or presented to the Land Use Commission or city council.

**PART 4.** Subsection (A) of Section 25-8-605 (*Waiver and Modification of City Requirements*) of the City Code is amended to read:

- (A) If enforcement of a City department policy, rule, or design standard will result in removal of a protected or heritage tree, the Watershed Protection and Development and Review Department may request that the responsible City department waive or modify the policy, rule, or design standard to the extent necessary to save the tree.

**PART 5.** Subsection (D) of Section 25-8-621 (*Permit Required for Removal of Protected Trees; Exceptions*) of the City Code is repealed.

**PART 6.** Section 25-8-624 (*Approval Criteria*) of the City Code is amended to read:

**§25-8-624 APPROVAL CRITERIA.**

- (A) The Watershed Protection and Development Review Department may [~~shall~~] approve an application to remove a protected tree only after determining that the tree:
- (1) prevents reasonable access to the property;
  - (2) prevents a reasonable use of the property;
  - (3) poses a high risk of property damage or personal injury that [is a hazard to life or property, and the hazard] cannot reasonably be mitigated without removing the tree;
  - (4) poses a high risk of inability to either provide new utility service or maintain existing infrastructure that cannot be reasonably mitigated without removing the tree;
  - (5)[(4)] is dying or dead;
  - (6)[(5)] is diseased, and:
    - (a) restoration to sound condition is not practicable; or
    - (b) the disease may be transmitted to other trees [~~and endanger their health~~]; or
  - (7)[(6)] for a tree located on public property or a public street or easement:
    - (a) prevents the opening of necessary vehicular traffic lanes in a street or alley; or
    - (b) prevents the construction of utility or drainage facilities that may not feasibly be rerouted.
- (B) If an application filed by a political subdivision of the state is approved under Subsection (A) (2), the Land Use Commission may, in its discretion, review the approval.
- (C) For an application to remove a protected tree located on private property, an applicant must request a variance from the Board of Adjustment or Land

Use Commission, as applicable, if the variance would eliminate the reason for removal of the tree.

- (1) The application to remove the protected tree may not be approved unless the variance is denied.
  - (2) An application fee is not required for a variance request required by this subsection.
  - (3) This subsection does not apply to an application that may be approved under Subsections (A)(3), (A)(4), ~~(A)(5), or (A)(6).~~
- (D) The Watershed Protection and Development Review Department shall ~~[may]~~ require mitigation, including but not limited to the preservation of existing trees or planting of replacement trees, as a condition of application approval. A removal permit may not be issued until the applicant satisfies the condition or posts fiscal security to ensure performance of the condition within one year.

**PART 7.** Section 25-8-625 (*Action on Application*) of the City Code is amended to read:

**§ 25-8-625 ACTION ON APPLICATION.**

- (A) The Watershed Protection and Development Review Department shall approve or deny an application to remove a protected tree:
  - (1) not later than the 10<sup>th</sup> working day after the complete application is filed; or
  - (2) if a variance request is required by Subsection 25-8-624 (C) (*Approval Criteria*), not later than the ~~[55<sup>th</sup> day after the application is filed]~~ 10<sup>th</sup> working day after that variance is denied.
- (B) ~~[If a variance request is required by Subsection 25-8-624 (C) (*Approval Criteria*), the Watershed Protection and Development Review Department shall notify the applicant of the 55-day review period.]~~
- ~~(C)~~ An application to remove a tree that is not associated with a pending city development application is automatically granted if the Watershed Protection and Development Review Department does not act on ~~[deny]~~ the application before the expiration of the applicable deadline in Subsection (A).

**PART 8.** Section 25-8-626 (*Effective Date and Expiration of Approval*) of the City Code is amended by amending subsection (A) to read:

(A) Approval of an application to remove a protected tree is effective immediately.[:

~~(1) on the third day after it is granted; or~~

~~(2) immediately, if the application was approved under Subsection 25-8-624(A) (3), (4), or (5) (Approval Criteria).]~~

**PART 9.** Chapter 25-8 Subchapter B, Article 1 (*Tree and Natural Area Protection*) is amended to renumber Division 3 (*Shoreline Relocation; Lake Fill*) as Division 4 and add a new Division 3 to read:

### **Division 3. Heritage Trees.**

#### **§ 25-8-641 REMOVAL PROHIBITED.**

(A) Removal of a heritage tree is prohibited.

(B) A heritage tree may be removed only if a variance is approved under Section 25-8-642 (*Variance*).

(C) A person may, without a variance, remove a damaged heritage tree that poses a high risk of property damage or personal injury if the tree is removed within seven days of being damaged. The director may extend this deadline for widespread and extensive storm damage.

#### **§ 25-8-642 VARIANCE.**

(A) The director may grant a variance from Section 25-8-641 (*Removal Prohibited*) to allow removal of a heritage tree only after determining that the heritage tree meets the criteria in Section 25-8-624 (A) (*Approval Criteria*) and that:

(1) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property;

(2) any variance from another City Code provision which would eliminate the need for a variance from Section 25-8-641 (*Removal Prohibited*) has been applied for as required in Section 25-8-644 (*Variance Prerequisites*) and has been denied; and

- (3) requiring the applicant to preserve the heritage tree would deprive the applicant of a privilege of property ownership given to owners of other similarly situated property with approximately contemporaneous development.
- (B) A variance granted under this section:
- (1) shall be the minimum change necessary to avoid the deprivation of a privilege given to other property owners and allow a reasonable use of the property;
  - (2) shall require mitigation, including but not limited to the preservation of existing trees or planting of replacement trees, as a condition of variance approval; and
  - (3) may not be issued until the applicant has satisfied the mitigation conditions required under Subsection (B) (2) or posted fiscal security adequate to ensure performance of the mitigation conditions not later than one year after issuance of the variance.
- (C) The director shall prepare written findings to support the grant or denial of a variance request under this division.

#### **§ 25-8-643 APPLICATION FOR VARIANCE.**

- (A) For a heritage tree located on public property or a public street or easement, an application requesting a variance to allow removal of the heritage tree may be filed by:
- (1) a City department, public utility, or political subdivision with the authority to install utility lines or other public facilities in or above the property, street, or easement; or
  - (2) the owner of property adjoining the site of the tree.
- (B) For a heritage tree located on private property, an application requesting a variance to allow removal of the heritage tree may be filed by:
- (1) the owner of the property on which the tree is located; or
  - (2) the city arborist, if the tree is seriously diseased or is a safety hazard.
- (C) An application requesting a variance to allow removal of a heritage tree must:

- (1) be filed with the director; and
  - (2) include the fee prescribed by ordinance; and
  - (3) include the information prescribed by the Administrative Criteria Manual.
- (D) The application fee is not required if the application is based solely on the criteria in Subsections 25-8-624 (A)(3), (A)(4), (A)(5) or (A)(6).

**§ 25-8-644 VARIANCE PREREQUISITE.**

- (A) If a variance from another City Code provision would eliminate the need for a variance from Section 25-8-641 (*Removal Prohibited*), before requesting a variance to allow removal of a heritage tree the applicant must:
- (1) request a variance from the Code provisions that would eliminate the need to remove the heritage tree; and
  - (2) obtain a grant or denial of the variance that would eliminate the need to remove the heritage tree.
- (B) The request for a variance to allow removal of a heritage tree may not be considered unless the variance from other City Code provisions is denied.
- (C) The application fee for a variance from another City Code provision required under this section is waived.
- (D) This section does not apply to an application for a variance to remove a heritage tree based on the criteria in Subsections 25-8-624 (A)(3), (A)(4), (A)(5) or (A)(6).

**§ 25-8-645 ACTION ON APPLICATION.**

- (A) The director shall approve or deny a variance request to allow removal of a heritage tree:
- (1) not later than the 10<sup>th</sup> working day after the complete application is filed; or

- (2) if a variance from another City Code provision is required under Subsection 25-8-644 (*Variance Prerequisites*), not later than the 10<sup>th</sup> working day after that variance is denied.
- (B) If the application is based on a damaged heritage tree constituting an immediate hazard to life or property, the application shall be approved or denied within 24 hours and no application fee shall be required.
- (C) An application to remove a tree that is not associated with a pending city development application is automatically granted if the director does not act on the application before the expiration of the applicable deadline.

**§ 25-8-646 VARIANCE EFFECTIVE DATE AND EXPIRATION.**

- (A) Approval of a variance request to allow removal of a heritage tree is effective immediately.
- (B) A variance to allow removal of a heritage tree expires:
  - (1) one year after its effective date, provided that the mitigation conditions in the variance remain in effect until the conditions are met; or
  - (2) for an application that is associated with a city development permit, when the development permit expires.

**§ 25-8-647 APPEAL.**

- (A) An applicant may appeal the denial of a variance request to allow removal of a heritage tree to the Land Use Commission.
- (B) An appeal under this section requires:
  - (1) review by the Environmental Board; and
  - (2) review by the Urban Forestry Board if the heritage tree is located on public property or a public street or easement.

**PART 10.** This ordinance takes effect on \_\_\_\_\_, 2009.

**PASSED AND APPROVED**

\_\_\_\_\_, 2009

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Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk

DRAFT